

Docket No.: EVAN-0973  
Application No.: 10/631,315  
Amendment Date: June 19, 2007  
Reply of Office Action of: April 16, 2007

## **REMARKS/ARGUMENTS**

Claims 1, 3, 4, 6-20, 60, 62 and 63 are pending in the application. Claims 6, 17 and 62 are allowed. Claims 1, 3-4, 7-16, 18-20, 60 and 63 are rejected, and claims 2 and 61 are objected to. Applicant requests reconsideration of this application in view of the following remarks and arguments.

### **Rejections Under §112**

Claims 9-12 are rejected under 35 U.S.C. §112, second paragraph as being indefinite. Examiner avers that the recitation of “second”, “third”, etc. is confusing because there is no “first” in claim 7. Applicant respectfully traverses this rejection and requests reconsideration.

Applicant believes that the use of “second”, “third”, etc. is not confusing. However, to expedite the issuance of this application, Applicant has amended claims 9-12 so they now use the term “first”. Applicant believes that these changes overcome Examiner’s §112 rejection of them.

### **Rejections Under §103**

Examiner rejects claims 1, 3, 7-11 and 60 under 35 U.S.C. §103(a) as being unpatentable over Sears in view of Nakano et al. Applicant respectfully traverses this rejection and requests reconsideration.

Applicant points out that claims 1 and 60 are independent claims and claims 3 and 7-11 are dependent claims depending from independent claim 1, either directly or indirectly.

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Applicant believes, for several reasons, that Examiner has not established a *prima facie* case of obviousness, with respect to these claims. As discussed in MPEP §2143, to establish a *prima facie* case of obviousness under 35 U.S.C. §103, three basic criteria must be met. The cited prior art reference (or references when combined) must teach or suggest all of the claim limitations. There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. The suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based upon the Applicant's disclosure. Further, there must be a reasonable expectation of success. A failure to meet any one of these criteria is a failure to establish a *prima facie* case of obviousness.

Claim 1 is directed to a fire door or gate system which includes a controller; a fire door or gate; an input drive for moving the door or gate; a clutch connected to the input drive and operatively connected to the controller. The **clutch includes a rotor and a flex plate**. The flex plate is electromagnetically urged into engagement and out of engagement with the rotor by the controller.

Claim 60 is directed to a fire door system which includes a controller; a fire door; an input drive for moving the door; a clutch connected to the input drive and operatively connected to the controller; a **clutch failure sensor** operatively connected to the clutch and the controller; **wherein the controller is configured to establish a clutch failure alarm condition in response to the signal.**

Applicant believes that Sears and Nakano, or any combination thereof, do not teach or suggest all of the claim limitations of claims 1 and 60. For example, Sears and Nakano do not teach or suggest a clutch connected to an input drive for moving a fire door. Applicant stated in the last response (January 5, 2007) that Nakano teaches a clutch and not a fire door. Examiner

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agrees with this statement. Hence, the teaching of the fire door must come from Sears.

However, Applicant believes that Sears does not teach or suggest a fire door. Applicant believes that Sears teaches a clutch for opening and closing a flexible curtain and Sears does not teach or suggest a clutch for use with a fire door, as required by claims 1 and 60. Support for Applicant's interpretation can be found throughout Sears, such as FIGS. 1, 2 and 3, as well as the corresponding text. For example, as stated in paragraph [0016] of Sears, "...the curtain 112 is wrapped around the spindle 142 and raised into the housing 132 by the two respective connecting cords 140. The connecting cords 140 are wound around the spool 250 coupled to the motor 120 via the coupler 122." Hence, input drive 120 in Sears is for moving a spindle 142 attached to a flexible curtain 112 and is not for moving a fire door, as claimed in claims 1 and 60. Further, element 122 in Sears is a coupler and is not a "clutch", as stated by Examiner. This disclosure in Sears clearly contradicts Examiner's interpretation of Sears because it teaches a clutch for raising and lowering a flexible curtain and not a fire door.

Applicant believes that the cited references do not teach or suggest a fire door at all. As discussed above, Nakano does not teach or suggest a fire door or any other type of door. The only door in the cited references that can be reasonably interpreted to be a fire door is door 134 in Sears. However, door 134 is not a fire door and it is not connected to any type of clutch. Applicant believes that door 134 is not a fire door because Sears never states that it is. In fact, Sears always refers to element 134 as being a door and provides no more specifics. Hence, it is unreasonable to state the element 134 is a fire door.

Applicant also believes that flexible curtain 112 is not a fire door. Applicant points out that Sears, in paragraph [0013], teaches that flexible curtain 112 is for sealing an opening from noxious fumes, smoke or contaminated air. Sears does not teach or suggest that flexible curtain 112 is used to seal an opening from fire. Sears provides more details as to the structure of flexible curtain 112 in paragraph [0017] and this description is not commensurate with that of a

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fire door. For example, Sears states that flexible curtain 112 includes “a 1 mil thick polyamide film reinforced with 100 denier nomex yarn spaced with a  $\frac{1}{4}$  inch matrix”. Applicant believes that a flexible curtain having the structure described in paragraph [0017] will not operate as a fire door. Hence, there is no possible way that flexible curtain 112 can be interpreted as being a fire door.

Regarding claim 60, a clutch failure sensor is operatively connected to the clutch and the controller. The controller is configured to establish a clutch failure alarm condition in response to the signal. Examiner argues that if the clutch fails, the door falls and inherently alerts the controller. Applicant respectfully disagrees with this statement. Applicant requested in the last response that Examiner provide more information as to why he thinks the controller is inherently alerted when the door falls. Thus far, Examiner still has not provided any.

Hence, Applicant believes that any combination of Sears and Nakano does not teach or suggest all of the limitations of claims 1 and 60, which is required to establish a prima facie case of obviousness. In particular, Sears and Nakano do not teach or suggest a clutch connected to an input drive for moving a fire door and/or a clutch failure sensor is operatively connected to the clutch. Applicant respectfully requests that Examiner withdraw his §103 rejection of claims 1 and 60 for at least this reason.

However, if Examiner does not withdraw his §103 rejection of claims 1 and 60 because the references do not teach or suggest each claim limitation, then Examiner should withdraw his §103 rejection of claims 1 and 60 because there is no suggestion or motivation, in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine Sears and Nakano to make claims 1 and 60 obvious.

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The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Although the prior art device “may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so.” *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992). A statement that modifications of the prior art to meet the claimed invention would have been “well within the ordinary skill in the art at the time the claimed invention was made because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000). If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Applicant believes that there is no motivation or desirability for using a flexible curtain in place of Applicant’s fire door because the flexible curtain will not impede the progress of a fire. As stated above, Sears, in paragraph [0013], teaches that flexible curtain 112 is for sealing an opening from noxious fumes, smoke or contaminated air. Sears does not teach or suggest that flexible curtain 112 is used to seal an opening from fire. Hence, the use of the flexible curtain in place of the fire door is unsuitable for the purpose of the fire door. Thus, there is no suggestion or motivation to combine Sears and Nakano.

Based on these findings, Applicant believes that Examiner has not established a prima facie case of obviousness by citing Sears and Nakano because they do not teach or suggest all of the limitations of claim 1 and there is not suggestion or motivation to combine them. Hence, Applicant respectfully requests that Examiner reconsider and withdraw his §103 rejection of

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claims 1 and 60.

Claims 3 and 7-11 are dependent claims depending from independent claim 1. If an independent claim is non-obvious under 35 U.S.C. §103, then any claim depending therefrom is non-obvious (See MPEP §2143.03). As discussed above, Applicant believes that independent claim 1 is non-obvious so that dependent claims 3 and 7-11 are also non-obvious.

Regarding claim 3, none of the references cited by Examiner teach, disclose or suggest an axle driveably connected to the input drive and rollably supporting at least a portion of the door, the axle rollably receiving and feeding out sections of the fire door.

Regarding claim 7, none of the references cited by Examiner teach, disclose or suggest a plurality of alarm states having a respective plurality of different sets of physical characteristics.

Regarding claim 8, none of the references cited by Examiner teach, disclose or suggest a hazardous environment sensor connected to the controller, wherein the hazardous environment sensor feeds a signal back to the controller when a hazard is detected in a space to which the fire door or gate system is pertinent and the controller places the system in a first of the plurality of alarm states having a first set of physical characteristics.

Regarding claim 9, none of the references cited by Examiner teach, disclose or suggest a clutch failure sensor connected to the clutch, wherein the clutch failure sensor feeds a signal back to the controller when the clutch fails and the controller places the system in a second of the plurality of alarm states having a second set of physical characteristics.

Regarding claim 10, none of the references cited by Examiner teach, disclose or suggest the controller and clutch being adapted to be connected to a primary power source, the system further comprising a primary power loss sensor connected to the controller, wherein the primary

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power loss sensor feeds back a signal to the controller when the primary power is lost and the controller places the system in a third of the plurality of alarm states having a third set of physical characteristics.

Regarding claim 11, none of the references cited by Examiner teach, disclose or suggest a secondary power source connected to the controller and to the clutch; a secondary power failure sensor connected to the controller; and wherein the secondary power failure sensor feeds a signal back to the controller when the secondary power fails and the controller places the system in a fourth of the plurality of alarm states having a fourth set of physical characteristics.

With respect to claims 3 and 7-11, Applicant respectfully request that Examiner more particularly point out where the limitations in these claims are found in the prior art references. Applicant believes that Examiner cannot and, consequently, his §103 rejection of these claims should be withdrawn.

Claims 4, 12-16, 19 and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sears et al. in view of Nakano and Crimmins. Applicant respectfully traverses this rejection.

Claims 4, 12-16, 19 and 20 are dependent claims depending from independent claim 1. If an independent claim is non-obvious under 35 U.S.C. §103, then any claim depending therefrom is non-obvious (See MPEP §2143.03). No combination of Sears, Nakano and Crimmins teaches or discloses the combination of the fire door system and clutch, as claimed in claim 1. Hence, claim 1 is non-obvious in view of Sears, Nakano and Crimmins, so that dependent claims 4, 12-16, 19 and 20 are also non-obvious.

Examiner has indicated that claims 6, 17 and 62 re allowed and claims 2 and 61 are allowable if rewritten in independent form. Hence, in order to expedite the issuance of this

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application, Applicant has chosen to cancel claims 2 and 61 and incorporate their limitations into claims 1 and 60, respectfully. Hence, Applicant believes that amended claims 1 and 60 are in condition for allowance.

Applicant believes that the amendment to claim 1 overcomes the rejection of claims 3, 4, 7-16, and 18-20 because they are dependent from claim 1, either directly or indirectly. Further, Applicant believes that the amendment to claim 60 overcomes the rejection of claim 63 because it is dependent from claim 60. Hence, Applicant believes that claims 3, 4, 7-16, 18-20 and 63 are also in condition for allowance.

Applicant has canceled and amended the aforementioned claims herein solely to expedite prosecution of this application. In doing so, Applicant does not dedicate the subject matter of the canceled and amended claims, or any of the previously canceled and amended claims, to the public, and does not acquiesce to the Examiner's reason(s) offered in support of the rejections of the canceled and amended claims. Applicant also reserves the right to seek patent protection for claims similar or identical to the canceled and amended claims in one or more subsequently filed, related applications. Further, the amendments to the claims are being made to expedite the issuance of this application and are not being made for reasons related to patentability.

### **Response to Arguments**

Examiner states that Applicant believes element 112 in Sears is not a fire door and that element 134 is a door. What Examiner does not state is that Sears believes this too, as evidenced in the discussion corresponding to FIGS. 1, 2 and 3. For example, in paragraph [0013] of Sears, he states that element 112 is a flexible curtain and element 134 is a door. No where does Sears state that elements 112 or 134 are a fire door. In fact, Sears does not mention a fire door at all. Applicant would like to point out that in paragraph [0013], Sears teaches that flexible curtain 112 is for sealing an opening from noxious fumes, smoke or contaminated air.

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Sears does not teach or suggest that flexible curtain is used to seal an opening from fire. Further, the description in paragraph [0017] precludes flexible curtain 112 from being used as a fire door. Hence, there is no possible way that flexible curtain 112 can be interpreted as being a fire door, as stated by Examiner.

The only door that can be reasonably construed as being a fire door in Sears is element 134, but Examiner states that he did not consider door 134 of Sears to meet the claimed subject matter. Further, Sears never states that element 134 is a “fire door”. Sears always refers to element 134 as being a “door”. Further, Sears never states that element 134 is connected to a clutch, as required by claims 1 and 60.

Examiner states that any door that prevents one from entering a room that has a fire therein may be considered as a fire door. However, Examiner provides no support for this definition of a fire door. Examiner is reminded that, according to MPEP 2111.01, the claims during examination must be interpreted as broadly as their terms reasonably allow. In re American Academy of Science Tech Center, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). Applicant believes that Examiner’s definition of a fire door is unreasonable because according to it, any door would be a fire door. Clearly, this is not the case. Hence, Examiner’s definition does not distinguish a “fire door” from a “non-fire doors”. According to Examiner’s definition, any door would be a fire door and this is clearly not what is meant when using the word “fire” before the word “door”.

Applicant believes that the words “fire door” should be given their plain meaning. The words of a claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (discussed below); Chef America, Inc. v. Lamb-Weston, Inc., 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004). Applicant believes that the words “fire door” should be given their plain meaning because this is not inconsistent with Applicant’s specification. Ordinary, simple

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English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say.

Applicant would like to point out that Sears specifically called element 112 “a flexible curtain” and did not call element 112 “a fire door” or even “a door”. Further, Sears specifically called element 134 “a door” and did not call element 134 “a fire door” or a curtain. Hence, it is clear that Sears knows the difference between a door and a curtain because he uses different language to describe these two different elements. Hence, if Sears intended for element 112 to be “a door” then he would have called element 112 a door, like he did when referring to element 134. Likewise, Sears would have referred to element 134 as “a fire door” if he intended element 134 to be a fire door. Instead, Sears refers to element 134 as just “a door” and applies no other significant meaning to it. Applicant believes that it is unreasonable to redefine this language in Sears when its meaning is clear and unambiguous.

Examiner states that Sears discloses a clutch. Applicant agrees. For example, Sears discloses a clutch 504 in FIG. 5. However, Applicant would like to point out that, in paragraph [0020] of Sears, he states that “...motor 120 is coupled to a rigid drive shaft 502 via a clutch 504 mounted to the housing 132. One end of the drive shaft 502 is rotatably connected to the viscous governor mounted to the housing 132. In this embodiment, the cables 140 controlling the curtain 112 (not shown) are attached to two pulleys 508 mounted directly to the end portions 510 of the rigid drive shaft 502. Accordingly, each end of the respective cord 140 is attached to a respective pulley 508, such that rotation of the drive shaft 502 will wind or unwind the cord.” Applicant believes that the only reasonable interpretation of the above paragraph is that Sears is using clutch 504 to move flexible curtain 112. Sears is not using clutch 504 to move a fire door or gate, as required by claims 1 and 60. Sears cannot possibly be using clutch 504 to move a fire door or gate because, as discussed above, Sears does not teach or suggest a fire door or gate.

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Examiner agrees with Applicant's assessment of Nakano in the previous response, wherein Applicant states that Nakano does teach a clutch but the clutch is not used in combination with a fire door system. Examiner states that the Nakano clutch is a generic clutch which has numerous features that render it desirable and which further is not limited as to its many uses and, consequently, is usable with infinite devices that require a clutch. Applicant believes that the statement that a clutch is "usable with infinite devices that requires a clutch" is not relevant to the §103 rejection of Applicant's claims because Applicant's claims do not use this language.

Further, Examiner's statement that a clutch is "usable with infinite devices that requires a clutch" is not sufficient to establish a *prima facie* case of obviousness. Applicant believes that the language included in claims 1 and 60 is relevant. Claims 1 and 60 clearly recite that the clutch is connected to an input drive for opening and closing a fire door or gate. Examiner has had several opportunities to show Applicant where this limitation is found in Nakano or Sears and, thus far, he hasn't. Instead, Examiner is focused on flexible curtain 112, which clearly is not a fire door or gate, as discussed above.

Examiner states that Sears constitutes such a device that requires a clutch and merely replacing his clutch with that of Nakano's clutch would have been well within the purview of one of ordinary skill in the art. Applicant would like to point out that when replacing the clutch of Sears with that of Nakano, the clutch is still used for opening and closing flexible curtain 112 and not a fire door or gate, as required by claims 1 and 60. Hence, Applicant believes that the combination of Sears and Nakano still do not make claims 1 and 60 obvious.

Examiner avers that the recitation that the clutch failure sensor operatively connected to the clutch and controller is a very broad recitation because "operatively connected" indicates that no structure or specific means are being recited. Applicant believes that this statement is in response to Applicants argument that claim 60 is not obvious in view of the cited references.

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Applicant would like to point out that claim 60 also includes the limitation that the clutch is connected to the input drive and the input drive is for moving a fire door. Applicant believes that Examiner has not shown where this feature is in the cited references. Applicant believes that they are not because Sears teaches a flexible curtain and not a fire door, as required by claim 60.

### **CONCLUSION**

Applicant respectfully requests reconsideration of this application. Applicant believes that claims 1, 3, 4, 6-20, 60, 62 and 63 are in condition for allowance and requests a timely Notice of Allowance to be issued in this case.

If any fees, including extension of time fees are due as a result of this response, please charge Deposit Account No. 19-0513. This authorization is intended to act as a constructive petition for an extension of time, should an extension of time be needed as a result of this response.

Respectfully submitted,

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